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10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Statement of Issues
Against:

15 **AMBER ALYSH SHERRITT**
16 **24612 Harbor View Unit B**
17 **Dana Point, California 92629**
Registered Nurse License

18 Applicant.

Case No. **2010-98**

STATEMENT OF ISSUES

20 Complainant alleges:

21 **PARTIES**

22 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
23 her official capacity as the Interim Executive Officer of the Board of Registered Nursing,
24 Department of Consumer Affairs.

25 2. On or about April 29, 2009, the Board of Registered Nursing, Department of
26 Consumer Affairs received an application for a Registered Nurse's License from Amber Alysh
27 Sherritt (Applicant). On or about April 24, 2009, Amber Alysh Sherritt certified under penalty of
28

1 perjury to the truthfulness of all statements, answers, and representations in her application. The
2 Board denied the application on May 18, 2009.

3 JURISDICTION

4 3. This Statement of Issues is brought before the Board of Registered Nursing (Board),
5 Department of Consumer Affairs, under the authority of the following laws. All section
6 references are to the Business and Professions Code unless otherwise indicated.

7 STATUTORY PROVISIONS

8 4. Section 2736 of the Business and Professions Code (Code) provides, in pertinent part,
9 that the Board of Registered Nursing (Board) may deny a license when it finds that the applicant
10 has committed any act constituting grounds for denial of licensure under section 480 of that Code.

11 5. Section 480 of the Code states in relevant part that:

12 (a) A board may deny a license regulated by this code on the grounds that the applicant has
13 one of the following:

14 (1) Been convicted of a crime. A conviction within the meaning of this section means a
15 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a
16 board is permitted to take following the establishment of a conviction may be taken when the
17 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
18 an order granting probation is made suspending the imposition of sentence, irrespective of a
19 subsequent order under the provisions of Section 1203.4 of the Penal Code.

20 . . .

21 (3) Done any act that if done by a licentiate of the business or profession in question,
22 would be grounds for suspension or revocation of license.

23 The board may deny a license pursuant to this subdivision only if the crime or act is
24 substantially related to the qualifications, functions or duties of the business or profession for
25 which application is made.

26 . . .

6. Section 2761 of the Code states in pertinent part that the board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

...

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

7. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

...

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

REGULATION PROVISIONS

8. Section 1444 of the California Code of Regulations, Title 16, states in pertinent part that a conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.

1 CAUSE FOR DENIAL OF APPLICATION

2 (Substantially Related Conviction)

3 9. Applicant Amber Alysh Sherritt's application is subject to denial under section
4 480(a)(1) and 480(a)(3) of the Code, pursuant to Code sections 2761(f), 2762(b) and 2762(c), as
5 defined by California Code of Regulations, Title 16, section 1444, in that she was convicted of a
6 crime substantially related to the qualifications, functions and/or duties of a registered nurse. The
7 circumstances are as follows:

8 a. On or about April 20, 2009, in a criminal court proceeding before the Orange
9 County Superior Court, Harbor Justice Center, Case No. 09SM01157, the applicant was
10 convicted on her plea of guilty to the misdemeanor violation of California Vehicle Code section
11 23152(b) for driving under the influence while blood alcohol level is 0.08% or more. The
12 circumstances are as follows:

13 1. On or about January 17, 2009, the applicant was pulled over by a California
14 Highway Patrol Officer because she was driving with a flat tire. The officer noticed the smell of
15 alcohol on the applicant's breath and observed objective signs of intoxication that included red,
16 watery eyes, lack of balance (staggering) and poor driving. The applicant agreed to submit to
17 preliminary alcohol screening ("P.A.S.") tests. The P.A.S. readings detected blood alcohol levels
18 of .232% and .209% respectively. The applicant submitted to a subsequent blood test which
19 determined that she had a final blood alcohol result of 0.21%. The applicant admitted to the
20 Highway Patrol Officer that she had been drinking.

21 b. The applicant was sentenced to 3 (three) years of informal probation, ordered to
22 pay \$390.00 in fines, ordered to enroll and participate in a 9 month First Offender Alcohol
23 Program and ordered to participate in the Mothers Against Drunk Driving (MADD) Victim's
24 Impact Panel.

25 PRAYER


26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Registered Nursing issue a decision:

28 1. Denying the application of Amber Alysh Sherritt for a Registered Nurse's License;

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2. Taking such other and further action as deemed necessary and proper.

DATED: 8/28/09


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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